



Provisions As To Disqualification On Ground Of Defection (Tenth Schedule): A Critical Study

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Abstract: Political defection in India refers to an elected official abandoning their political party for another, a practice addressed by the Tenth Schedule (Anti-Defection Law) of the Constitution. Under this law, a Member of Parliament (MP) or Legislative Assembly (MLA) can be disqualified for voluntarily giving up party membership or voting against the party's whip without permission. Although the 52nd Amendment introduced this law in 1985 to curb instability caused by unprincipled shifts in loyalty, it has been criticized for being ineffective in its original purpose.

Index Terms - Political Defection, Political Party, Parliament, Assembly, and Constitution.

I. INTRODUCTION

The Anti-Defection Law, introduced through the 52nd Constitutional Amendment Act of 1985, marked a historic moment in the evolution of India's democratic framework. It was aimed at addressing what was popularly called "*Aaya Ram, Gaya Ram*" politics—the rampant practice of legislators frequently switching parties for personal, political, or financial gains. This practice had destabilized governments at both the Union and State levels, leading to frequent collapses of ministries, political opportunism, and erosion of public trust in parliamentary institutions.

Before the enactment of the law, party defections had become so common that they were almost institutionalized. Following the 1967 general elections, when non-Congress governments began to emerge in many states, defections by elected representatives multiplied. Between 1967 and 1971, it is estimated that nearly half of the 4,000 legislators elected to Parliament and State Assemblies switched parties at least once, creating political instability across India. Some members defected multiple times, causing governments to form and collapse overnight. Since the word "*political party*" was not even defined in the Constitution at that time, this practice was difficult to regulate legally. This prompted growing demands for a constitutional curb on defections. The problem was not merely about political instability—it also raised ethical questions concerning betrayal of electoral mandate and the undermining of representative democracy. The 52nd Amendment inserted the Tenth Schedule in the Constitution, commonly called the Anti-Defection Law, in 1985 during the tenure of Prime Minister Rajiv Gandhi. The law laid down conditions under which elected legislators could be disqualified on grounds of defection.

II. Historical Background:

Widespread political defections by elected M.P.s and M.L.As resulted from the political parties' inability to obtain an absolute majority in 1967, which would have allowed several of them to establish governments in both the states and the federal government. The issue was made worse by the lack of a strict regulation requiring political parties to resign. According to reports, some M.L.As switched parties three or four times in a single day with the express intent of obtaining power and money. The pernicious practice of political

defections becoming a national issue. In the end, the Lok Sabha unanimously approved the following resolution on December 8, 1967:

A high-level committee consisting of representation of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and makes recommendations in this regard.

In order to investigate the issues surrounding political defections and recommend solutions, a committee known as the "Committee on Defections" was established, chaired by Shri Y.B. Chavan, the Union Home Minister at the time. In its report dated January 7, 1969, the Committee noted:

Following the Fourth General Elections, in the short period between March, 1967 and February, 1968, the Indian Political scene was characterized by legislators in numerous instances of change of party allegiance by legislators in several states. Compared to roughly 542 cases in the entire period between the First and the Fourth General Elections, at least 438 defections occurred in these 12 months alone. Among independents 157 out of a total of 376 elected, joined various parties in this period. That the lure of office played a dominant part in decisions of legislators of defect was obvious from the fact that out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections.

The following were some other unsettling aspects of this phenomenon:

multiple acts of defection by the same person or set of persons (Haryana affording a conspicuous example); few resignations of the membership of the legislature on the part of defectors to political proprieties, constituency preference or public opinion, and the belief held by the people and expressed in the press that corruption and bribery were behind some of these defections.

Former Lok Sabha Secretary-General Shri Subhash C. Kashyap claims that the temptation of power was a major factor in the over 2000 cases of defection and counter-defection that occurred between the fourth and fifth general elections in 1967 and 1972.

The committee on Defections recommended, inter alia:

Article 102(1)(e) and 191(1)(e) of Constitution empower Parliament to make a law providing for disqualification a person for being chosen as, and for being, a member of either House of Parliament or of the State Legislative Assembly or Legislative Council. As standing for election to Parliament or State Legislative is only a statutory as distinguished from a fundamental right, it is open to Parliament to impose such restrictions or conditions on the exercise and enjoyment of that right as it considers necessary or reasonable in public interest.

Therefore, it is conceivable to include in a special law that a lawmaker who renounces his affiliation with a political party would not be allowed to continue serving in the State Legislature or Parliament. Nevertheless, he will have the freedom to run for office again if he so chooses and to serve as a member if elected. But when a lawmaker resigns for financial gain or a position of profit, resentment enters the picture, and we believe this ought to be addressed more harshly. This can be accomplished by stating that, in addition to being disqualified, they will not be eligible to continue serving as members of the State Legislature or Parliament for a specific amount of time.

Defection for the sake of ministership can easily be placed within the aggravated category since, in this context, we interpret the word "office of profit" as used in Art. 102/191 to include ministership (as is clear from the explanation in Cl. (2) of that Article).

A person who has been elected to either house of parliament, the legislative assembly, or the legislative council of a state and who was given the reserved symbol of a political party in connection with that election must renounce (either verbally, physically, or in any other way) their affiliation with or allegiance to that political party after the election. Upon doing so, they will no longer be eligible to serve in the House of Parliament, Legislative Assembly, or Legislative Council to which they were elected.

In its Report on the Midterm General Election in India, 1968–69, the Election Commission also bemoaned the following:

When the results of the Fourth General Elections of 1967 were declared, it was found that the Indian National Congress which has till then been the dominant political party throughout India has lost its majority in a number of State Legislative Assemblies and its majority in the House of the People has also drastically dwindled. This not only resulted in the formation of non-Congress Governments in a number of State Assemblies but also made the members of such State Assemblies forget the election-promises and pledges held out to the electorate at the time of election by and on behalf of the parties by whom they were sponsored and started defecting in large numbers in quick succession from their respective parties. The

elected representatives forgot that defection and re-defection from one party to another is not paying in the long-run, and more often than not it acts as boomerang hitting the person by whom it is resorted to. The moral consequences of defection and floor-crossing are sometimes far-reaching and serious.

In light of the Committee on Defections' recommendations, the Constitution (Thirty-Second Amendment) Bill, 1973 was presented to the Lok Sabha on May 16, 1973, with the goal of amending Articles 102 and 191 of the constitution and, among other things, preventing a member from serving as a Minister in either the State Legislature or either House of Parliament after he voluntarily resigns from the political party that nominated him for the position or of which he became a member following the election, or on his voting or refusal to vote in the House in defiance of any directives given by the political party or by any individual or body designated by it in this regard without first gaining the consent of the party, individual, or authority. However, the law expired on January 18, 1977, when the House was dissolved.

Soon after, in 1977, the Election Commission of India specifically recommended that lawmakers should not be allowed to desert from one political party to another, with the caveat that doing so might result in some other disqualification, such as losing their seat. However, the Commission believed that the Representation of the People Act of 1951 should not be amended. The controversial issue was referred to a committee led by Choudhary Charan Singh, who was the Union Home Minister at the time. The Constitution (Forty-eight Amendment) Bill, 1978 was introduced in the Lok Sabha on August 28, 1978, based on the committee's recommendations. In contrast to the previous bill, this one aimed to add a new Schedule, the Tenth Schedule, to the Constitution to address different facets of defection and to define leaving one's original political party as a disqualification under Article 102 or 191, as applicable. However, despite fierce opposition from the members of the ruling party, the 1978 Bill was withdrawn the same day it was submitted.

In the 1982 case of Mian Bashir Ahmad v. State of Jammu & Kashmir, the Jammu and Kashmir High Court painted a concerning picture of political defections.² According to the ruling, there were 41 defections in 1977, 57 in 1978, 69 in 1979, and 74 in 1970. What could be more egregious than this political lack of discipline and betrayal of democratic ethics!

The Constitution (Fifty Second Amendment) Bill, 1985 was introduced and passed in the Parliament on January 30, 1985, after the second bill had been in effect for seven years. By that time, enough harm had been done to the nation's political morale and ethics, and the Act went into effect on March 1, 1985. The following was mentioned in the Act's Statement of Objects and Reasons:

The evil of political defections has been a matter of national concern. If it not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection bill. The bill is meant for outlawing defection and fulfilling the above assurance.

The constitution (Fifty-second Amendment) Act, 1985 this gave the much awaited birth to the anti-defection law as contained in the Tenth Schedule to the Constitution. However, hardly the illness of political defections could be cured to the desirable extent, though controlled to a large extent. The tenth schedule continued to be a subject-matter of controversy- both the judiciary and the legislature. It is said that the Tenth Schedule has barred individual defections but legalizes group defections, that a split in the main political party whereas it should be otherwise, that the status of legislator expelled by his political party has not been defined, and the like. In his article viz. "Speaker's office-II" published in Statesman dated 14th April, 1998, Shri. C.K.Jain held on bars to mention:

Yet another case of controversy surrounding the Speakership is the power of adjudicating on petitions submitted under the Tenth Schedule of the Constitution, known as the Anti-defection law. Had other Speaker Rabi Ray in his widely acclaimed decision, possibly the floodgates of unprincipled defections would not have taken place and the political parties would not have faced with the splits engineered largely for reasons of personal aggrandizement and brazen pursuit of power. The best course is to repeal the law. And if that is not done, law should be so amended as to achieve its object to curb the unprincipled defections.

It is highly desired that the Constitution Bench of the Honorable Supreme Court, which is currently considering the Mayawati v. Markandeya Chand case, will eventually provide answers to a number of these problems.

Recall that in 1988, following the implementation of the Tenth Schedule, the Hon'ble Speaker of the Lok Sabha heard the first defection case involving a Mizoram M.P. and the first victim of the Anti-Defection law as it was included in the Tenth Schedule.

III. Constitutional Validity:

The argument that the Tenth Schedule's provisions, even if paragraph 7 is excluded, contradict the fundamental framework of the Constitution by affecting elected officials' democratic rights and parliamentary democracy is deemed illogical and subject to rejection:- *KihotoHollonhonv.Zachillhu*. By alone, the Tenth Schedule's clause granting the Speakers/Chairpersons adjudicatory powers would not invalidate it due to the possibility of political prejudice. The tenth schedule does not aim to establish a non-justiciable constitutional region by establishing an extra basis for disqualification and for deciding contested disqualifications.-*KihotoHollonhonv.Zachillhu*.

The democratic system envisioned in the Constitution requires elections to be held at regular, predetermined intervals. Thus, it is necessary to preserve and uphold the integrity of the election process. According to *KihotoHollohon v. Zachillhu*, this does not imply that the rights and immunities granted by Article 105(2) of the Constitution are transformed into fundamental rights or that the Tenth Schedule ought to be repealed for being in violation of that provision.

Scope:

The Tenth Schedule's provisions are beneficial and are meant to fortify India's parliamentary democracy by preventing unethical and unprincipled political defections.

The goal of the anti-defection law is to acknowledge the practical necessity of elevating the proprieties of political and personal behavior - whose grotesque manifestations and awkward erosion have been the foundation of the times - above certain theoretical presumptions that, in practice, have descended into a pit of political and personal degradation.

The Constitution now clearly recognizes political parties, despite the fact that it did not at first specifically mention their existence. This change was brought about by the Constitution (Fifty-Second Amendment) Act of 1985. According to *Kanhiya Lal Omar v. R.K. Trivedi*, the Tenth Schedule to the Constitution, which was added by the aforementioned Amending Act, recognizes the existence of political parties and lays out the conditions under which a member of the State Legislature or Parliament would be considered to have defected from the party and would be disqualified from serving in the relevant House.

The Speaker's order under the Tenth Schedule on a Member's defection-based disqualification is not dependent on the outcome of an election. which, under the terms of the People Act of 1951, can only be contested by an electoral petition.- *The Speaker of the Legislative Assembly of Goa v. Dr. Kashinath G. Jallami*. Defection-based disqualification

(1) A member of a House who belongs to any political party will not be eligible to serve in the House, subject to the rules in paragraphs 4 and 5.

a) if he has voluntarily resigned from that political party; or
b) if he votes or abstains from voting in that House in defiance of any directive from the party he belongs to or from any person or authority designated by it in this regard, without first obtaining the consent of that party, person, or authority, and if that voting or abstention has not been excused by that party, person, or authority within fifteen days of the date of the voting or abstention. *Explanation*- For the purposes of this sub-paragraph, -

a) A member of a House who is elected will be considered to be a member of the political party, if any, that nominated him for the position;

b) a member of a House who is nominated as a member will be considered to be a member of the political party of which he becomes, or, if applicable, first becomes, a member before the six-month period that elapses after he satisfies the requirements of Article 99 or, if applicable, Article 188.

(4) Regardless of the aforementioned provisions of this paragraph, a person who is a member of a House on the commencement of the Constitution (Fifty Second Amendment) Act, 1985, whether elected or nominated as such, shall—

i. be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party, if he was a member of such party immediately prior to such commencement;

ii. in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph.

(2) of this paragraph or, if applicable, be considered a member of the House nominated for the purposes of this paragraph's sub-paragraph (3).

IV. Disqualification on ground of defection not to apply in case of split.

If a member of a House asserts that he and any other members of his legislative party represent a faction that emerged from a split in his original political party and that group includes at least one-third of the members of that legislative party, he will not be disqualified under paragraph 2 sub-paragraph

- i. on the grounds that he has voluntarily renounced his membership in his original political party; or
- ii. that without the prior consent of the party, person, or authority, he voted or abstained from voting in that House in violation of any directive issued by that party or by any person or authority authorized by it in that regard, and that the party, person, or authority did not condone the voting or abstention within fifteen days of the date of the voting or abstention; and

b) From the moment of such a break, that faction will be considered his original political party for the purposes of this paragraph and his party to which he belongs for the purposes of paragraph 2 sub-paragraph (1).

V. Split & Burden of Proof:

The person claiming that a member has been disqualified bears the burden of proving the requirements of paragraph 2, and the person claiming that there was a split in his original political party and that the disqualification under paragraph 2 is not attracted as a result of the split bears the burden of proving the requirements of paragraph 3.- *Union of India v. Ravi S. Naik*.

V.1 Legislature Party after a split:

A legislature party is also considered to be the group that was formed as a result of the break and consists of at least one-third of the parent parliamentary party.-*Markandeya Chand v. Mayawati*.

VI. Interim stay against the Speaker's Order of Disqualification- Effect of:

The stay of operation of the order of disqualification dated December 13, 1990, regarding two MLAs of the M.G. Party, Bandekar and Chopdekar, meant that the declaration that they were disqualified from serving as members of the Goa Legislative Assembly under the Speaker's order dated December 13, 1990, was no longer in effect as of December 14, 1990, and it was not possible to say that they were not members of the Goa Legislative Assembly on December 24, 1990, the date of the alleged split.- *Union of India v. Ravi S. Naik*.

The Speaker's decision to disregard the High Court's stay order in his order dated February 15, 1991, cannot be justified on the grounds that the Speaker was free to interpret paragraphs 6 and 7 of the Tenth Schedule as he saw fit and disregard the High Court's stay order in the absence of a Supreme Court ruling declaring paragraph 7 to be invalid.- *Union of India v. Ravi S. Naik*.

Any action made by the Speaker in violation of the High Court's stay order, which was issued on December 14, 1990, would be deemed void. The Speaker's order from February 15, 1991, which treated Bandekar and Chopdekar as disqualified members in complete violation of the High Court's stay order from December 14, 1990, was declared invalid in this instance.-*Union of India v. Ravi S. Naik*.

VII. On the Members of U.P. Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987-Rule 3:

The standards outlined in Rule 3 of the Disqualification Rules—*Mayawati vs. Markandeya Chand*—must also be met by the head of the newly formed legislature party that resulted from a split of the original legislature party.

Conclusion

Political defections continue to be a prevalent and significant issue in Indian politics, especially in state assembly, in spite of the anti-defection statute. The judiciary upholds the law's preference for party discipline over the autonomy of individual lawmakers.

References

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- [3] AIR 1993 SC 412: 1992 Supp. (2) SCC 651: 1992 AIR SCW 3497; JT 1992 (1) SC 600: 1992 (1) SPJ 565.
- [4] Ibid.

[5] AIR 1993 SC 1873: (1993) 2 SCC 703: JT 1993 (3) SC 594: 1993 (2) UJ (SC) 113: 1993 AIR SCW 1578.